IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 2251 OF 2005

M/s. Shamoolchand Vimalchand
& Co. and others ...Applicants

Versus

M/s. Champaklal & Company & Ors ...Respondents

.....

Mr. Rajender Singh i/b Mr. Suresh Jain, Advocate for Applicants.
Mr. C.V. Golwala i/b Mr. Amit Sheth, Adv. for the respondent No.1.
Mr. V.B. Konde Deshmukh, A.P.P. for State.

.....

CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 22ND AUGUST, 2005

P. C.:-

1. Leave to amend. Amendment to be carried out forthwith.

2. Heard the learned advocate for the applicants i.e. original accused, the learned advocate for the respondent No.1 i.e. original complainant and the learned A.P.P. for the State.

3. The applicants had preferred an application before the learned Magistrate for recalling of process. The said application came to be rejected. From the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. reported in (2004) 7 SCC 338,** it is clear that the Magistrate has no power to recall the process. Thus, I am not

inclined to interfere with the order of the Magistrate rejecting the application for recalling or process.

4. Being aggrieved by the order of the learned Magistrate rejecting the application for recall of process the applicants had preferred revision before the Sessions Court i.e. Revision No.655 of 2004. By order dated 17.3.2005 the said revision came to be dismissed by the learned Sessions Judge. Being aggrieved by the said order, this application has been preferred by the present applicants. In view of the decision of the Supreme Court in the case of Adalat Prasad (supra) it is clear that the Magistrate has no power to recall process, hence, obviously the Sessions Court could not have set aside the order of the learned magistrate rejecting an application for recall of process.

5. For the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, I am of the opinion that the applicants have an efficacious remedy of preferring revision before the Sessions Court against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the applicants are granted liberty

to prefer revision before the concerned Sessions Court against the order of the Magistrate issuing process.

6. Liberty is granted to the applicants to prefer revision before the learned Sessions Judge for quashing of process issued against them in Criminal Case No.1372/S/1999. It is made clear that the said revision shall be in respect of the order of the Magistrate issuing process and not in respect of the order of the Magistrate rejecting the application for recall of process. The learned advocate for the applicants states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today. The learned advocate for the respondent No.1 i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

7. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

8. Application is disposed of.

(SMT. V.K. TAHILRAMANI, J.)